



DIVERSITY in the Legal Profession

A Look at the Present and the Future...

Are Women Still A Minority?

By Marta-Ann Schnabel



Like most households, ours is sustained by a generous share of family folklore. During our kids' "tell me a story" phase, my husband and I would take turns regaling them about the blessed period before they were born. A favorite, of course, is the story of how mommy and daddy met. My daughter repeats it even today with great relish: "Daddy was telling a joke about dumb blonde women, and my mommy threw her drink on him!"

When I arrived in New Orleans more than 25 years ago, I wore no make-up, regarded undergarments as a form of masculine oppression, and began each day by reading quotations from my favorite feminist authors: Susan and Andrea Dworkin, Anais Nin, Germaine Greer, Gloria Steinem, Doris Lessing. By the time I met my husband, I had been cajoled by friends and family (who were obviously concerned that I would otherwise not find a job) into changing my wardrobe. However, my stridency remained steadfast. I tolerated no nuance of chauvinism, even in the form of a good-natured joke. Happily, some — like my scotch-drenched husband — found me endearing.

Fast-forward 24 years, and I am perhaps even less endearing, but also considerably less aware of "women's is-

sues.” I smile good-naturedly at the appellation “Feminazi” that my male colleagues occasionally use to describe *other* women. I’ve lost track of the Dworkin sisters, and no one in my circle of friends has even *heard* of Doris Lessing. Instead, my attention has been focused on the more mundane things — like making payroll, developing clients, assuring that briefs are timely filed, preparing for trial, tending to the myriad of bar matters that fall in my lap, and finding a reasonably good college for my smart-but-not-yet-fully-blossomed son.

So it is only fair to admit that neither the title of this article, nor its subject matter, was my idea. Indeed, it was assigned from on high (the Louisiana State Bar Association’s Task Force on Diversity in the Profession, co-chaired by Supreme Court Justice Bernette J. Johnson and LSBA Past President E. Phelps Gay) to be a component of this special issue of the *Journal* devoted to diversity. That said, the question “*Are women still a minority?*” has prompted no small amount of personal reflection and caused much discussion amongst my women friends and colleagues with whom I shared the inquiry.

Do Statistics Really Provide An Answer?

According to the 2000 census, females comprise 50.9 percent of the total population. That means that we can hardly be considered a “minority” in the true sense of the word, but anyone who has ever had a mother or raised a girl child knows that there is more to the story than that. Women have long struggled for parity in many societal settings, most particularly the workplace.

The good news is that there are some signs that I was right to shed my feminist mantle. Especially within the ranks of higher education, women are crossing over the threshold from repression into that ambiguous arena of opportunity. Dean Lawrence H. Summers notwithstanding, 2004 marked the year that Harvard, for the first time, offered more

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incoming undergraduate freshman slots to women than to men. That corresponds to the data published by the National Center for Education Statistics reporting that more women than men now earn college degrees. In the academic year, 2001-02, 57 percent of the bachelor’s degrees and 59 percent of the master’s degrees were earned by women. Almost half of the Ph.Ds in that year were earned by women (46.3 percent), and women’s enrollment in law schools across the country has hovered at about 49 percent for the last few years.

Moreover, according to Current Population Survey (a joint project between the Bureau of Labor Statistics and the Bureau of the Census), women make up nearly 47 percent of the total U.S. labor force. They constitute 50 percent or better of the nurses, teachers, librarians and social workers in our society, but that perhaps comes as no surprise. What may be a bit surprising is that more than 50 percent of the financial managers, medical services managers, claims adjusters and examiners, insurance underwriters, accountants, auditors, tax examiners and pharmacists are women.

Despite the upward trend in other professions, the number of women lawyers has begun to show a slight decline nationwide, having topped out at 29 percent of all practitioners in 2002 and fallen back to slightly less than 28 percent in 2004. There has been a similar small decrease in the number of women applying to law school. Nonetheless, 49 percent of the law school graduates in 2003 were women. The National Association for Law Placement reports that women comprise 43 percent of the associate or staff attorney positions, but only 16.8 percent of the partners.

It’s this last set of numbers, of course, that gets to the heart of the issue and strips “opportunity” to its more practical core. Plenty of women train to become lawyers, and most graduate with every intention of finding a firm at which they can learn their trade, grow, prosper and perhaps become a partner. Yet, a great many flee from the traditional firm structure within a few years of hiring on. This phenomenon is susceptible of many interpretations, and not surprisingly, all of them have surfaced in my informal survey of friends and colleagues.

To be fair, a number of well-done studies regarding this phenomenon and others impacting women in the profession exist. In fact, Shelley Hammond Provosty of New Orleans is the chair of the DRI Task Force on Women Who Try Cases, which has produced an in-depth study entitled “A Career in the Courtroom: A Different Model for the Success of Women Who Try Cases.” Likewise, the ABA Commission on Women in the Profession continues to publish thoughtful and well-researched manuscripts on our “status.” I recommend all of this material for its insight and thorough treatment of the subject matter. This article, by contrast, is wholly anecdotal, lacks any semblance of scientific method, is far too opinionated, and probably raises more questions than it answers.

Are Some Stories Better Left Untold?

Typically, when women lawyers are asked about gender bias, their first instinct is to tell a funny story about some form of *past* treatment by judges, col-

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leagues, partners. I have my own lexicon of stories like this: the job interview at which a partner with a prominent New Orleans law firm inquired about my sex life, explaining that he needed to know with whom his female associates were sleeping because so many left to follow their “man,” for example, or my own former partner who explained that he really did not want to hear from me during a meeting because he heard enough of “those kinds of complaints” (a euphemism) at home. However, my favorite story of this genre comes from a domestic lawyer who runs a successful two-person practice in a rural parish. In about the sixth month of her second pregnancy,

when she stood to make an appearance before the court on a pending motion, she was greeted from the bench by the exclamation, “So, your husband knocked you up again, eh?”

We rattle these stories off, to some measure, to avoid having to say what we really think. The female managing partner of a satellite office of a New Orleans firm told me that she was not sure how to offer a meaningful answer to my question without sounding like a “Pollyanna.” Likewise, my friend who had been “knocked up” said she was far more focused on keeping her practice afloat and her children out of trouble than she was on what it was like to be a woman lawyer. She didn’t consider herself less professionally respected than men (after all, she had won that motion!). On the other hand, she admitted that she was constantly tired, over-committed, worried about her children and physically run-down, but she wasn’t at all sure that her problems were any different from those of the average small-town practitioner, regardless of gender.

Many of the women with whom I spoke felt an immediate need to describe themselves as having chosen the “mommy” track. This was often said in a self-denigrating manner, as though a judicial clerkship or a staff or corporate position were somehow an admission of second-class status. One judicial law clerk in north Louisiana spoke of fleeing private practice and its “blatant gender discrimination.” She went on to compare herself to a well-known woman partner in a local firm by saying, “maybe I have just been easier to beat down.” Although she claims to love her current job, she sees it as a “refuge” from the predatory

world of private practice.

Yet, a lot of women veterans of that “predatory” world have a different view. Those of my vintage (that is, a tad over 40) wanted to talk about younger women. Many were quizzical about the attitudes of the young. A prominent woman litigator from Baton Rouge dismissed the issue of gender bias against “chick lawyers” and instead wished to focus on the generation gap amongst women lawyers. The youngsters, she noted, have no compassion or understanding for those who came before them — those who were compelled to behave like “tough broads” to make inroads. Now these young women criticize the older, successful women as being “bitter and mean.” Another prominent practitioner from the Northshore of New Orleans echoed these views, commenting that younger women lawyers did not appear to have “nearly the awareness of gender” that older women lawyers do and that “often they learn the hard way.”

It is indeed worth noting that much has changed in a short time. As a practical matter, women in the profession now comprise three different subsets of experience: (1) those who began to practice before 1979, when women were only a tiny percentage of law school graduates, (2) those who began to practice in the 1980s, when female enrollment in law schools began to climb to the 30 percent mark and serious numbers of graduates were women, and (3) those who have graduated within the last five years, when female enrollment in law schools has almost matched that of men. The perspectives, expectations and ambitions of each of these generations are surprisingly disparate, having been colored by markedly different experiences.

A case in point: about five years ago, I was the only woman partner in a medium-sized New Orleans law firm. A young woman associate sought the advice of one of my partners about how to handle a case assigned to her. During the course of the conversation, she reported

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that the opposing counsel “intimidated” her, and she sought some tips on how to handle him. Although he answered her questions, my partner also sought me out immediately. In a hushed voice, he told me he was worried that this young woman would never become a good litigator because she allowed herself to become “intimidated.” My first reaction was a flash of anger — because, of course, the associate had been foolish enough to *tell* a partner what she was feeling. I certainly would have known better than to say that when I was an associate! Surely this young woman should have had more sense! But, indeed, she was not constrained by worry — much less conscious appreciation — that her world view was not the world view by which she was being judged. This young woman did not understand that she was supposed to copy a man’s behavior. Instead, she

did what women tend to do: she sought advice and began to process a reactive strategy. It goes without saying she managed the opposition rather well. She also never became a partner, choosing instead to retire and raise a family.

In the end, the pertinent issue may well be what we as a profession model as success and treat with respect. Women of a certain generation bemoan the “Superwoman” image while secretly believing that they are better people and true pioneers for having returned to the telephone, dictaphone or megaphone within hours of giving birth. There could be no question about *their* equality. Yet, there has also been little question of the toll that it took. Those who followed have begun to build a model that does not require a woman to be the clone of a man in order to feel comfortable in her own success. But we still have a long way to

go. There also needs to be room for family, for internal support rather than internal competition, and for mentors of both genders who value good lawyering and recognize that good lawyers make the best client contacts. Of course, along the way, we need to be able to make a living.

And in the meantime, the answer is: Yes, women are still a minority . . . but watch your back!

ABOUT THE AUTHOR

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